STATE OF NEW YORK

1768

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to sanctions and criminal penalties for operating a motor vehicle while under the influence of alcohol; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1192 of the vehicle and traffic law is amended by adding two new subdivisions 2-b and 2-c to read as follows:

2-b. Criminal intoxication; per se. No person shall operate a motor vehicle while such person has .25 of one per centum or more and less than .30 of one per centum by weight of alcohol in the person's blood as shown by a chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

2-c. Aggravated criminal intoxication; per se. No person shall operate a motor vehicle while such person has .30 of one per centum or more by weight of alcohol in the person's blood as shown by a chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

§ 2. Section 1193 of the vehicle and traffic law is REPEALED and a new section 1193 is added to read as follows:

§ 1193. Sanctions. 1. Criminal penalties. (a) Driving while ability impaired. A violation of subdivision one, two or two-a of section eleven hundred ninety-two of this article shall be a felony and shall be punishable by a fine of one thousand dollars and by imprisonment in a state correctional facility for not less than one year nor more than two years.

(b) Aggravated driving while intoxicated. A violation of subdivision two-a of section eleven hundred ninety-two of this article shall be a

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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felony and shall be punishable by a fine of two thousand dollars and by imprisonment in a state correctional facility for not less than two years nor more than three years.

(c) Criminal intoxication. A violation of subdivision two-b of section eleven hundred ninety-two of this article shall be a felony and shall be punishable by a fine of three thousand dollars and by imprisonment in a state correctional facility for not less than three years nor more than four years.

(d) Aggravated criminal intoxication. A violation of subdivision two-c of section eleven hundred ninety-two of this article shall be a felony and shall be punishable by a fine of five thousand dollars and by imprisonment in a state correctional facility for not less than three years nor more than five years.

(e) Ability impaired by drugs; misdemeanor offense. A violation of subdivision four of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(f) Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of any subdivision of section eleven hundred ninety-two of this article nor shall a judge or magistrate impose a sentence of conditional discharge or probation unless such conditional discharge or probation is accompanied by a sentence of a fine as provided in this subdivision.

(g) The sentences required to be imposed by this subdivision shall be imposed notwithstanding any contrary provision of this chapter or the penal law.

(h) Nothing contained in this paragraph shall prohibit the imposition of a charge of any other felony set forth in this or any other provision of law for any acts arising out of the same incident.

(i) Where the court imposes a sentence for a violation of section eleven hundred ninety-two of this article, the court may require the defendant, as a part of or as a condition of such sentence, to attend a single session conducted by a victims impact program. For purposes of this section, "victims impact program" means a program operated by a county, a city with a population of one million or more, by a not-for-profit organization authorized by any such county or city, or a combination thereof, in which presentations are made concerning the impact of operating a motor vehicle while under the influence of alcohol or drugs to one or more persons who have been convicted of such offenses. A description of any such program shall be filed with the commissioner and with the coordinator of the special traffic options program for driving while intoxicated established pursuant to section eleven hundred ninety-seven of this article, and shall be made available to the court upon request. Nothing contained herein shall be construed to require any governmental entity to create such a victims impact program.

2. License sanctions. (a) Revocations. A license shall be revoked and a registration may be revoked for the following minimum periods:

(1) Driving while ability impaired. One year, where the holder is convicted of a violation of subdivision two of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(2) Driving while ability impaired by drugs or by the combined influence of drugs or of alcohol and any drug or drugs. Six months, where the holder is convicted of a violation of subdivision four or four-a of section eleven hundred ninety-two of this article.

(3) Aggravated driving while intoxicated. Two years, where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(4) Criminal intoxication. Three years, where the holder is convicted of a violation of subdivision two-b of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(5) Aggravated criminal intoxication. Four years, where the holder is convicted of a violation of subdivision two-c of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(6) Out-of-state offenses. Ninety days, where the holder is convicted of an offense consisting of operating a motor vehicle under the influence of intoxicating liquor or drugs where the conviction was had outside this state.

(7) Effect of rehabilitation program. No period of revocation arising out of this paragraph may be set aside by the commissioner for the reason that such person was a participant in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article.

(8) Action required by commissioner. Where a court fails to impose, or incorrectly imposes, a suspension or revocation required by this subdivision, the commissioner shall, upon receipt of a certificate of conviction filed pursuant to section five hundred fourteen of this chapter, impose such mandated suspension or revocation, which shall supersede any such order which the court may have imposed.

(b) Reissuance of licenses; restrictions. Where a license is revoked pursuant to this subdivision, no new license shall be issued after the expiration of the minimum period, except in the discretion of the commissioner; provided, however, that in no event shall a new license be issued where a person has been twice convicted of a violation of subdivision two-a, two-b, two-c, three, four or four-a of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

(c) Suspension or revocation; sentencing. (1) Notwithstanding anything to the contrary contained in a certificate of relief from disabilities issued pursuant to article twenty-three of the correction law, where a suspension or revocation, other than a revocation required to be issued by the commissioner, is mandatory pursuant to paragraph (a) or (d) of this subdivision, the magistrate, justice or judge shall issue an order suspending or revoking such license upon sentencing, and the license holder shall surrender such license to the court. Except as hereinafter provided, such suspension or revocation shall take effect immediately.

(2) Except where the license holder has been charged with a violation of article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident or convicted of such violation or a

violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years, the judge, justice or magistrate may issue an order making said license suspension or revocation take effect twenty days after the date of sentencing. The license holder shall be given a copy of said order permitting the continuation of driving privileges for twenty days after sentencing, if granted by the court. The court shall forward to the commissioner the certificates required in sections five hundred thirteen and five hundred fourteen of this chapter, along with a copy of any order issued pursuant to this paragraph and the license, within ninety-six hours of sentencing.

(d) Special provisions. (1) Suspension pending prosecution; procedure. a. Without notice, pending any prosecution, the court shall suspend such license, where the holder has been charged with a violation of subdivision two, two-a, two-b, two-c, three, four or four-a of section eleven hundred ninety-two of this article and either (i) a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident, or (ii) has been convicted of any violation under section eleven hundred ninety-two of this article within the preceding five years.

b. The suspension under clause a of this subparagraph shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a motor vehicle in violation of subdivision two, two-a, two-b, two-c, three, four or four-a of section eleven hundred ninety-two of this article and either (i) the person had been convicted of any violation under such section eleven hundred ninety-two of this article within the preceding five years; or (ii) that the holder committed a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge or a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has not been previously convicted of any violation of section eleven hundred ninety-two of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such license to the license holder unless such license is suspended or revoked pursuant to any other provision of this chapter.

(2) Bail forfeiture. A license shall be suspended where the holder forfeits bail upon a charge of a violation of any subdivision of section eleven hundred ninety-two of this article. Such suspension shall not be terminated until the holder submits to the jurisdiction of the court in which the bail was forfeited.

(3) Permanent disqualification from operating certain motor vehicles. a. Except as otherwise provided in this section, in addition to any revocation set forth in paragraph (a) of this subdivision, any person sentenced pursuant to subdivision one of this section shall be perma-

nently disqualified from operating any vehicle set forth in such paragraph. In addition, the commissioner shall not issue such person a license valid for the operation of any vehicle set forth therein by such person. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of five years has expired from such sentencing provided:

(i) that during such five year period such person has not violated any of the provisions of section eleven hundred ninety-two of this article or any alcohol or drug related traffic offense in this state or in any jurisdiction outside this state;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section.

b. Any person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article while operating a commercial motor vehicle who has had a prior finding of refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this article while operating a commercial motor vehicle or has had a prior conviction of any of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, shall be permanently disqualified from operating a commercial motor vehicle. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of ten years has expired from such sentence provided: (i) that during such ten year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a commercial motor vehicle and has not been convicted of any one of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter; (ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and (iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section.

c. Upon a third finding of refusal and/or conviction of any of the offenses which require a permanent commercial driver's license revocation, such permanent revocation may not be waived by the commissioner under any circumstances.

(4) Probation. When a license to operate a motor vehicle has been revoked pursuant to this chapter, and the holder has been sentenced to a period of probation pursuant to section 65.00 of the penal law for a

violation of any provision of this chapter, or any other provision of the laws of this state, and a condition of such probation is that the holder thereof not operate a motor vehicle or not apply for a license to operate a motor vehicle during the period of such condition of probation, the commissioner may not restore such license until the period of the condition of probation has expired.

(5) Application for new license. Where a license has been revoked pursuant to this subdivision, or where the holder is subject to a condition of probation as provided in subparagraph four of this paragraph, application for a new license may be made within forty-five days prior to the expiration of such minimum period of revocation or condition of probation, whichever expires last.

(6) Suspension pending prosecution; excessive blood alcohol content. a. A court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two or three of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

b. The suspension occurring under this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

c. Nothing contained in this subparagraph shall be construed to prohibit or limit a court from imposing any other suspension pending prosecution required or permitted by law.

d. Notwithstanding any contrary provision of this chapter, if any suspension occurring under this subparagraph has been in effect for a period of thirty days, the holder may be issued a conditional license, in accordance with section eleven hundred ninety-six of this article, provided the holder of such license is otherwise eligible to receive such conditional license. The commissioner shall prescribe by regulation the procedures for the issuance of such conditional license.

e. If the court finds that the suspension imposed pursuant to this subparagraph will result in extreme hardship, the court must issue such suspension, but may grant a hardship privilege, which shall be issued on a form prescribed by the commissioner. For the purposes of this clause, "extreme hardship" shall mean the inability to obtain alternative means of travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's house-

hold, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. The burden of proving extreme hardship shall be on the licensee who may present material and relevant evidence. A finding of extreme hardship may not be based solely upon the testimony of the licensee. In no event shall arraignment be adjourned or otherwise delayed more than three business days solely for the purpose of allowing the licensee to present evidence of extreme hardship. The court shall set forth upon the record, or otherwise set forth in writing, the factual basis for such finding. The hardship privilege shall permit the operation of a vehicle only for travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.